

REPLY EXHIBIT “B”

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1 BENJAMIN B. CHILDS, SR., ESQ.
2 State Bar # 3946
3 BENJAMIN B. CHILDS, LTD.
3 318 South Maryland Parkway
Las Vegas, Nevada 89101
4 Telephone: (702) 385-3865
Facsimile: (702) 385-1847
5 ben@benchilds.com
Attorney for Defendants/Counterclaimants

6
7 DISTRICT COURT
CLARK COUNTY, NEVADA

8 EUGENE TUMBARELLO and
SHAMROCK PAINTING, INC } CASE NO. A-17-763560-C
9 } DEPT. NO. XIX
10 Plaintiffs/Counterdefendants }
11 v. } DEFENDANTS' MOTION TO
12 ELIZABETH RAMSEY and GREGG CHAMBERS } DISMISS AND FOR OTHER RELIEF
13 Defendants/Counterclaimants }

14
15 **NOTICE OF MOTION**

16 TO: PLAINTIFFS EUGENE TUMBARELLO and SHAMROCK PAINTING, INC through
17 their attorney JAY SHAFFER

18 PLEASE TAKE NOTICE that BENJAMIN B. CHILDS, ESQ., the attorney for Defendants,
19 will bring the following MOTION on for hearing on MARCH 18, 2019, at 8:30 A .M.,
20 before Department 19 of the District Court, located in the Regional Justice Center in Las Vegas,
21 Clark County, Nevada.

22 /s/ Benjamin B. Childs

23 BENJAMIN B. CHILDS, ESQ.
Nevada Bar No. 3946
24 Attorney for Defendants/Counterclaimants

25 COME NOW Defendants/Counterclaimants **ELIZABETH RAMSEY and GREGG**
26 **CHAMBERS** [referred to as Plaintiffs], by and through their attorney, BENJAMIN B. CHILDS,
27 ESQ., and file a motion to dismiss and for related relief.

1 **FACTUAL SUMMARY**

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3 Plaintiffs/Counterdefendants EUGENE TUMBARELLO and SHAMROCK PAINTING, INC
 4 [Plaintiffs] filed the instant complaint and the case proceeded through motion practice. The lawsuit
 5 involved ownership of two residential parcels in Las Vegas, 1201 Westlund and 1207 Westlund Las
 6 Vegas, NV 89102. No discovery was performed. Two appeals were timely filed by Defendants
 7 following injunctive relief.

8 The case was settled through the Nevada Supreme Court Settlement Program and a written
 9 Memorandum of Understanding was executed by the parties on August 15, 2018. [Exhibit A, referred
 10 to herein as the Memo]. The Memo contained the following provisions.

- 11
- 12 * The Memo expressly was “a global release of all claims”. [Section 7]
 - 13 * “Both sides to bear their own attorney fees and costs”¹ [Section 8]
 - 14 * “The agrees agree to dismiss the pending legal action in Dist. Court Case No. A0-17-
 15 763560-C and the Matters on Appeal ...” [Section 6]
- 16

17 Since Section 6 of the Memo states that the parties stipulated that the instant case be dismissed,
 18 Defendants file the instant motion.

19 The appeals were dismissed as provided in Section 6 of the Memo. [Exhibit B].

20 Defendants posted two cost bonds pursuant to their Notices of Appeal [Exhibit C] and Plaintiffs
 21 posted two Cost Bonds pursuant to NRS 18.130 and Chambers’s timely demand.[Exhibit D].

22 Plaintiffs recorded two lis pendens’ encumbering the title to both parcels of real property.
 23 Given that all issues are resolved between the parties and the case is to be dismissed, the dismissal
 24 order should specifically cancel the two lis pendens’ recorded with the Clark Count Recorder, using
 25 this case number, at references 201710240001423 and 201710250000615 [Exhibit E]

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30 ¹ Except that Defendants agreed to pay for costs of preparing a Deed of Trust and
 31 recording same

1 POINTS AND AUTHORITIES

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3 1. STATUTE OF FRAUDS

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5 The statute of frauds requiring all transfer of rights in real property be in writing has been the
6 law for literally hundreds of years. Nevada's statute of frauds is set forth below.

7
8 NRS 111.205 No estate created in land unless by operation of law or written
9 conveyance; leases for terms not exceeding 1 year.

10 1. No estate or interest in lands, other than for leases for a term not exceeding 1
11 year, nor any trust or power over or concerning lands, or in any manner relating
12 thereto, shall be created, granted, assigned, surrendered or declared after
13 December 2, 1861, unless by act or operation of law, or by **deed or conveyance,**
14 **in writing, subscribed by the party creating, granting, assigning,**
15 **surrendering or declaring the same,** or by his lawful agent thereunto authorized
16 in writing.

17 By it's own terms, the August 15, 2018 Memorandum of Understanding resolved all issues
18 between the parties.. The only anticipated transfer of interest was a deed of trust cross collateralized
19 by both properties, so there is no

20 2. MEETING OF THE MINDS

21 Basic contract principles require, for an enforceable contract, an offer and acceptance, meeting
22 of the minds, and consideration. May v. Anderson 119 P.3d 1254 121 Nev. 668 (2005) May goes
23 on to hold that a valid contract cannot exist when material terms are lacking or are insufficiently certain
24 and definite. May was a case involving enforcement of a settlement contract, similar to the instant
25 case.

26 In this case, there was an offer and acceptance, consideration and a meeting of the minds which
27 was memorialized in writing and signed by the parties. Defendants' appeals were dismissed, so they
28 certainly exchanged huge consideration.

29
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1 3. CONTRACT INTERPRETATION
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3 If a contract is clear and unambiguous; the contract will be enforced as written. Ellison v.
 4 C.S.A.A., 106 Nev. 601, 603, 797 P.2d 975, 977 (1990). But if there are ambiguities, the contract
 5 will be interpreted against the drafter. Ringle v. Bruton 120 Nev. 82, 86 P.3d 1032 (2004).

6 In determining the parties' intent, the trier of fact must construe the contract as a whole,
 7 including consideration of the contract's subject matter and objective, the circumstances of its drafting
 8 and execution, and the parties' subsequent conduct. Ringle v. Bruton 120 Nev. 82, 86 P.3d 1032
 9 (2004).

10 CONCLUSION
 11

13 The Court should enforce the Memo and dismiss the case. The Order should expressly state
 14 that the cost bonds posted by Defendants should be refunded, that the cost bonds posted by Plaintiffs
 15 should be refunded, and that the lis pendens' are canceled.

16 /s/ Benjamin B. Childs, Sr.
 17

18 BENJAMIN B. CHILDS, Sr.
 19 Nevada Bar # 3946
 Attorney for Defendants /Counterclaimants

20 Exhibits attached :

- 21 A. Memorandum of Understanding dated August 15, 2018
 22 B. Dismissals of Appeals
 23 C. Bonds for Appeal filed April 9, 2018 and June 15, 2018
 24 D. NRS 18.130 Cost bonds filed December 27, 2017
 25 E. Lis Pendens and Clark County Recorder printouts for the two properties with recording
 references

26 CERTIFICATE OF ELECTRONIC SERVICE
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28 This MOTION TO DISMISS AND FOR OTHER RELIEF, with exhibits, was served through
 29 the Odessey File and Server system to opposing counsel at filing. Electronic service is in lieu of
 30 mailing.

31 /s/ Benjamin B. Childs, Sr
 32 BENJAMIN B. CHILDS, SR ESQ.
 NEVADA BAR # 3946